AUTHORITIES.

Authorities Cited—*Continued.*

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO REVIEW STATE COURT JUDGMENT.

1.

The Supreme Court of the State of Wisconsin is without power to make findings of fact.

The power of the Supreme Court of the State of Wisconsin is created and circumscribed by Article 7, Section 3, Wisconsin Constitution granting to it appellate jurisdiction only so far as here material.

The State Supreme Court has always recognized its own limitation in power. By Chapter 242 of the Laws of 1893, the legislature sought to impose and grant to the Supreme Court responsibility and power to direct entry of judgment irrespective of findings of fact of the lower court. The enactment so far as here material provided:

> "All questions of law or fact presented by the record upon such appeal or writ of error, shall be reviewed by the supreme court, and it shall be the duty of the supreme court to examine and review the evidence when the same is preserved by a bill of exceptions, and give judgment according to the right of the cause, regardless of the decision upon questions of fact or law made by the court below, according to law and equity."

This enactment was declared void under the Constitution of the state at the first term of court following the enactment quoted, *Klein vs. Valerius,* 87 Wis. 54. The quoted enactment of the legislature became effective April 28, 1893. The cited case declaring the law void was de-

cided January 30, 1894. In *Deery vs. McClintock*, 31 Wis. 195, the court expressly held that the legislature could not take original jurisdiction from the Circuit Courts and bestow it upon the Supreme Court.

The rule is distinctly stated at 5 *C. J. S.* p. 1318, Sec. 1845:

> "Outside of constitutional or statutory requirement * * * an appellate court is generally not only not required to make findings of fact but is without power to do so especially in an action at law."

The last recognition of the principle here involved that we have been able to find is in *Nickel vs. Black*, 248 Wis. 122.

It is and has always been the rule in Wisconsin that the findings of a trial court in an action at law where a jury is waived have the same force and effect as a verdict.

Evans vs. Bennett, 7 Wis. 404;
Sippel vs. Fond du Lac County, 184 Wis. 607;
Angers vs. Sabatinelli, 246 Wis. 374;
Nickel vs. Black, 248 Wis. 122.

The trial court construed the mandate and opinion of the State Supreme Court at 248 Wis. 85 to make findings of fact contrary to the findings of fact made by the trial court upon the evidence, R. 965-975. (See opinion of trial court of 955-964) Petitioners contended that it was the duty of the trial court to construe the opinion and mandate of the Supreme Court as declarations of law applicable to assumed facts and not as findings of fact made by the Supreme Court binding upon it. The State Supreme Court approved the construction placed upon its decision and specifically rejected the claim that the effect of the findings of fact made by it was to deprive petitioners of property

rights in contravention to the due process clause of the Fourteenth Amendment to the Constitution of the United States, *250 Wis. 32.*

No question of law was presented wiith respect to the finding. It is now and always has been the law in Wisconsin under the constitutional powers of the State Supreme Court that whether or not an inference or finding *can be* made from given facts is a question of law, but whether an inference or a finding *shall be* made from given facts is a question of fact within the sole and exclusive province of the trial court.

Borchert vs. Borchert, 141 Wis. 142;
Morris F. Fox & Co. vs. Lisman, 208 Wis. 1;
Will of Mechler, 246 Wis. 45;
Nickel vs. Black, 248 Wis. 122.

Upon the trial of the case, no evidence was offered or received from which it could be said that petitioners had breached the contract by attempting to force performance under terms and conditions not agreed upon. On the other hand, the only evidence on the subject was elicited on cross examination of petitioner, George M. Illges, R. 836, 837, Exhibit "47", question by attorney for respondent to petitioner, George M. Illges:

"Q. You may refer, Mr. Illges, to Exhibit '47' (handing to the witness). When you wrote that letter of September 25, 1942, to Dr. Congdon was it your understanding that in that letter you were stating the terms and conditions of a new agreement pursuant to which you would proceed to the cutting of additional lumber at Ayer Park?

"A. No, sir, no new agreement. To try to finish up and receive money on products produced which I had sold; to load cross ties which I had sold; to finish milling and loading the crossing plank which

I had sold and convert it to money. He had stopped the operation and this was only to complete that order at that time."

The judgment originally entered in favor of petitioners included damages for breach of contract in the amount of seven thousand nine hundred eighty-seven and 32/100 (7,987.32) dollars, R. 136-138. This judgment was nullified by findings of fact made by the Supreme Court in excess of its power and without support in the record.

2.

The judgment finally entered denying petitioners' damages is supported only by findings of fact made by the Supreme Court of Wisconsin and not by any finding of the trial court.

The trial court by decision found that respondent breached the contract by prohibiting further performance by the other parties, R. 107-8-9. (Original decision of trial court.)

By supplemental decision the trial court found that the offer of petitioners to withdraw upon certain minimum conditions did not indicate a desire of petitioners to get out of the contract but an offer to compromise the situation and avoid litigation, R. 123-4.

The trial court by findings of fact found that respondent was not justified in terminating the joint venture, R. 129; that petitioners had done everything within their power to carry out the contract in good faith; that respondent had no substantial cause for complaint; that respondent had not been damaged in any manner; that none of the reasons assigned by respondent, as justification for his termination of the contract, went to the heart of the contract or constituted material breaches by either of

the petitioners. That respondent wrongfully terminated the contract, R. 130.

The findings of fact prepared by the trial judge after remand of the record from the Supreme Court do not incorporate the findings made by the Supreme Court, R. 127-135.

The judgment entered on the 7th of October, 1946, omits damages in favor of petitioners for breach of contract, R. 136-139.

The judgment finally became absolute after the second appeal by respondent to the State Supreme Court, R. 1053-1060, and omitted damages in favor of petitioners for breach of contract, R. 999-1010, judgment of October 7, 1946, R. 1203-1210, order amending judgment, November 3, 1947. (Order directing disbursement and permitting issuance of execution of November 14, 1947, R. 1211-1213.)

3.

The judgment denies property rights of petitioners in contravention of the Fourteenth Amendment to the Constitution of the United States.

Rights acquired by judgment are protected by the due process clause of the Fourteenth Amendment. 16 *C. J. S.* p. 1195, Sec. 599; *Collins vs. Welsh,* 75 F. (2d) 894, 295 U. S. 762, 79 Lawyers' Ed. 1704.

Both of the petitioners are citizens of the United States and entitled to the privileges and protections of the Fourteenth Amendment to the Constitution.

Hill vs. Bugbee, 250 U. S. 525, 63 Lawyers' Ed. 1124.

4.

The judgment of the State Court is open to review.

The rule that the decisions of a State Court on questions of fact ordinarily cannot be made the subject of inquiry in the United States Supreme Court is subject to two exceptions:

First, when a Federal right has been denied as a result of a finding shown by the record to be without evidence to support it; and

Second, where conclusions of law as to Federal rights and findings of fact are so intermingled as to make it necessary to review the facts in order to pass on the Federal question.

Northern Pacific Rwy. Co. vs. State of North Dakota, 236 U. S. 585, 59 Lawyers' Ed. 735;

Truax vs. Corrigan, 257 U. S. 312; 66 Lawyer's Ed. 254;

Fiske vs. State of Kansas, 274 U. S. 380, 71 Lawyers' Ed. 1108;

Great Northern Rwy. Co. vs. State of Washington, 300 U. S. 154, 81 Lawyers' Ed. 573;

City of Shreveport vs. Cole, 129 U. S. 39, 32 Lawyers' Ed. 589;

Chicago B & Q Rwy. Co. vs. City of Chicago, 166 U. S. 226, 41 Lawyers' Ed. 979;

Oxley vs. County of Butler, 166 U. S. 648, 41 Lawyers' Ed. 1149.

5.

A substantial Federal question is presented by the record for review on certiorari.

After remand of the record after the decision and mandate of the Supreme Court of Wisconsin appearing at 248 Wis. 85, petitioners sought the right to offer additional evidence on the one issue created by the finding of the Supreme Court as to whether or not petitioners had ever sought to enforce a new contract or refuse performance of the contract found by the trial court. This application was denied, paragraph 4 judgment entered October 7, 1946, R. 1002.

Petitioners sought review of the construction of the trial court of the decision and mandate of the Supreme Court, which construction was affirmed on mandamus, 250 Wis. 32.

On the second appeal to the State Supreme Court, petitioners moved to review the judgment upon the ground that judgment erroneously fails to award damages to respondent for breaches of contract by the parties prior to the termination of performance thereof by Congdon and upon the ground that the judgment erroneously fails to include damages sustained by petitioners by reason of the breach of the contract by respondent, R. 1194-1202. These rights were denied, 251 Wis. 50, and the State Supreme Court erroneously concluded that neither party was entitled to any damages, affirmed the appeal on respondent's appeal, and modified the judgment on petitioners' motion for review, 251 Wis. 50. The record was thereafter remanded to the Circuit Court for modification of the findings and amendment of the judgment.

This court has repeatedly held that a claim that a state has in violation of the Federal Constitution deprived

petitioner of property without due process of law raises a substantial Federal question for review.

Postal Telegraph Co. vs. City of Newport, 247 U. S. 464, 62 Lawyers' Ed. 1215;

Home Ins. Co. vs. Dick, 281 U. S. 406, 74 Lawyers' Ed. 926;

Miller vs. Schoene, 276 U. S. 272, 72 Lawyers' Ed. 568;

Brinkerhoff-Faris Trust & Savings Co. vs. Hill, 281 U. S. 673, 74 Lawyers' Ed. 1107;

36 *C. J. S.* 157, Sec. 247;

25 *C. J.* 934, Sec. 286.

A substantial Federal question is raised where substantial rights protected by Constitution are denied irrespective of whether these rights were denied by the legislative, executive, or judicial branch of the state government.

Brinkerhoff-Faris Trust & Savings Co. vs. Hill, 281 U. S. 673 at 682, 74 Lawyers' Ed. 1107 at 1114.

6.

The judgment here complained of did not become final until the judgment which was entered October 7, 1946, (R. 1009), had been modified by the order entered November 3, 1947, and became subject to execution by order made and entered November 14, 1947.

A judgment or decree which terminates the remedies between the parties on the merits and is subject to execution is final.

Whiting vs. The Bank of of the U. S., 13 Pet. 6, 10, Lawyers' Ed. 33;

Market St. Rwy. Co. vs. Railroad Comm. of California, 324 U. S. 548, 89 Lawyers' Ed. 1171;
McComb vs. Knox County, 91 U. S. 1, 23 Lawyers' Ed. 185;
62 *L. R. A.* 515, et seq.

A judgment which is reversed and remanded for further proceedings is not a final judgment for purposes of review in the United States Supreme Court.

Central New England Rwy. Co., 279 U. S. 415, 73 Lawyer's Ed. 770;
Morgan vs. Thompson, 124 F. 203.

A judgment of affirmance and remanding the case does not result in a final judgment until the modifications directed have been made.

Reddall vs. Bryan, 65 U. S. 420, 16 Lawyers' Ed. 740;
Coe vs. Armour Fertilizer Works, 237 U. S. 413, 59 Lawyers' Ed. 1027.

See:

87 Lawyers' Ed., p. 264 note.

It is the general rule that where a judgment is amended or modified, the time within which an appeal from such determination may be taken runs from the date of the amendment or modification and not from the date of the original entry. 80 Lawyers Ed. p. 1121 note.

In *Department of Banking vs. Pink,* 317 U. S. 264, 87 Lawyers' Ed. 254, a judgment affirmed by the New York Court of Appeals was a final judgment so far as determining the time from which the three months' period for appeal or certiorari is concerned because nothing remained undone or to be undone. The amendment sought by petitioners merely seeking to have the remitter amended to show that a Federal question had been determined did not

have the effect of a modification of the judgment so as to extend the time from which the three months' period for appeal or certiorari was to be computed to the date of the amendment. The judgment here under consideration did not become final and reviewable until it ended the litigation by fully determining the rights of the parties. On the first appeal to the State Supreme Court the mandate of the court reversed and remanded the case for further proceedings to determine the rights of the parties. The second appeal modified the judgment and required substantial reconsideration and modifications to the findings of fact, conclusions of law and judgment previously entered. These modifications were not of a ministerial nature. The rights of the parties to the assets of the joint enterprise had not been determined finally and completely pursuant to the mandate of the court from the first appeal. In lieu of nominal damages allowed to the respondent in the judgment as entered, no damages were allowed in the final judgment. After sale of the assets, the court reserved the right and power on motion to determine the several amounts due the several parties. In the order amending the judgment dated November 3, 1947, R. 1210, the court expressly reserved and precluded the issuance of execution until the further order of the court. These functions are judicial in nature requring judicial discretion, judgment and power and not ministerial acts of a purely clerical nature.

Conclusion.

Petitioners respectfully submit that this petition for certiorari should be granted. Petitioners' right to property is involved. The Fourteenth Amendment to the Constitution of the United States prohibits a state acting

through its legislative, executive, or judicial branch from depriving them of property without due process of law. Petitioners' right to the judgment for damages has been deprived solely by an act of the State Supreme Court in making a finding of fact beyond and in excess of its power, which finding is not supported by any evidence in the case and which finding is in fact diametrically opposed to the findings of the trial court made after a thorough analysis of all of the evidence and observations of the witnesses who testified upon the trial. The right involved has been consistently and repeatedly urged upon not only the trial court but the Supreme Court at the first opportunity. The trial court felt obliged to enter the judgment directed by the Supreme Court. The trial court construed the opinion and mandate of the Supreme Court as making findings of fact, and the Supreme Court affirmed the construction placed upon its opinion and mandate by the trial court and directed the entry of judgment here complained of.

We respectfully submit that writ of certiorari issue to the Circuit Court for Walworth County, Wisconsin.

Respectfully submitted,

J. ARTHUR MORAN,
Attorney for Petitioners,
Delavan, Wisconsin.

CAVANAGH, STEPHENSON,
MITTELSTAED & SHELDON,
Of Counsel,

606 56th Street, Kenosha, Wisconsin.

MOTION OF PETITIONERS TO DISPENSE WITH PRINTING RECORD OR IN THE ALTERNATIVE TO LIMIT PARTS OF THE RECORD TO BE PRINTED.

The petitioners, George M. Illges, and Louise Hamm, administratrix of the estate of John Hamm, deceased, by their attorney, J. Arthur Moran, of Delavan, Wisconsin, respectfully move the court for an order dispensing with the printing of the record pursuant to Rule 38, and in the alternative for an order limiting the parts of the record to be printed upon the following grounds and for the following reasons:

1.

Petitioners have in good faith attempted to stipulate with respondent limiting the printing of the record by the omission of unnecessary parts not material to any issues raised upon this petition for certiorari and respondent has refused to so stipulate.

2.

That annexed hereto and incorporated herein and marked Exhibit "A" is the notice and proposed stipulation served upon respondent.

3.

That annexed hereto and marked Exhibit "B" is the designated portions of the record material to the questions raised upon this petition for certiorari.

Dated this 4th day of February, 1948.

J. ARTHUR MORAN,
Attorney for Petitioners,
Delavan, Wisconsin.

CAVANAGH, STEPHENSON,
MITTELSTAED & SHELDON,
Of Counsel,
606—56th Street, Kenosha, Wisconsin.

Exhibit 'A'"

SUPREME COURT OF UNITED STATES

October, 1947, term

No. .....

GEORGE M. ILLGES and LOUISE HAMM,
Administratrix of the estate of
John Hamm, deceased,

Petitioners,

vs.

J. E. CONGDON, JR.,

Respondent.

Stipulation.

It Is Hereby Stipulated and Agreed, by and between the parties to the above entitled proceeding, by and through their respective attorneys, that the clerk shall print those portions of the record returned to this court pursuant to

praecipe identified and described in designation of the portions of the record to be printed served upon respondent on the 21st day of January, 1948.

J. ARTHUR MORAN
Attorney of Record
Delavan, Wisconsin

CAVANAGH, STEPHENSON, MITTELSTAED
& SHELDON
Of Counsel

By .....WM. A. SHELDON.....
Attorneys for Petitioners

GODFREY & PFEIL
Attorneys for Respondent

By .....

SUPREME COURT OF UNITED STATES

October, 1947, term

No. .....

GEORGE M. ILLGES and LOUISE HAMM,
Administratrix of the estate of
John Hamm, deceased,

Petitioners,

vs.

J. E. CONGDON, JR.,

Respondent.

Notice of proposed stipulation.

TO: GODFREY & PFEIL
Attorneys for Respondent
Elkhorn, Wisconsin

You Are Hereby Notified that the undersigned, pursuant to Rule 38 (8) of the Rules of the Supreme Court of the United States, propose that the designation of the parts of the record to be printed served upon you on the 21st day of January, 1948, be stipulated upon as the portions of the record to be printed by the clerk of the supreme court.

You Are Further Notified that this proposal is based upon the petition for the manuscript copy of the petition and supporting brief served upon you on the 21st day of January, 1948.

You Are Further Notified that the designation of the portions of the record to be printed heretofore referred to contains the only material parts of the record necessary to a consideration of the questions presented by the petition for writ of certiorari.

That annexed hereto is a proposed stipulation.

You Are Further Notified that in default of stipulation, then and in that event, petitioners by and through their respective attorneys will move the court for an order taxing costs against respondent for the printing of the unnecessary parts of the record, together with such other order as may in the matter be proper.

Dated this 26th day of January, 1948.

J. ARTHUR MORAN,
Attorney for Petitioners,
Delavan, Wisconsin.

CAVANAGH, STEPHENSON,
MITTELSTAED & SHELDON,
Of Counsel,
Kenosha, Wisconsin

Exhibit "B"

SUPREME COURT OF UNITED STATES

October, 1947, term

No. .....

GEORGE M. ILLGES and LOUISE HAMM,
Administratrix of the estate of
John Hamm, deceased,

Petitioners,

vs.

J. E. CONGDON, JR.,

Respondent.

Designation of portions of the record to be printed pursuant to Rules 38 and 13 of the Rules of the Supreme Court.

J. ARTHUR MORAN
Attorney for Petitioners
Delavan, Wisconsin

CAVANAGH, STEPHENSON, MITTELSTAED
& SHELDON
Of Counsel
Kenosha, Wisconsin

Designation of parts of the record to be printed.

Now comes the petitioners above named, and respectfully request that the clerk print the following portions of the record for determination of the issues presented by the petition for certiorari pursuant to rule 13, paragraph 9 of the Rules of the Supreme Court:

1. Complaint of George M. Illges—R. 2 to 5
   Print the following paragraphs thereof: 6, 7, 8, and 9, including the wherefore clause.

2. Answer and counterclaim of J. E. Congdon, Jr.—R. 9 to 19.
   Print the following pa[illegible]ereof: 12, 20, 30, 33, 34, 35, and the [illegible]se.

3. Reply to George M. Illges [illegible]
   Print the following pa[illegible]r[illegible]: 7, 8, 9, 10.

4. Cross-complaint of defendant, J. E. Congdon, Jr. against John Hamm—R. 30 to 34.
   Print the following paragraphs thereof: 8, 11, 12, and the wherefore clause.

5. Answer and cross-complaint of John Hamm against J. E. Congdon, Jr.—R. 45 to 52.
   Print the following paragraphs thereof: 10, 12, 13, 14, 16, 17, and the wherefore clause.

5a. Cross-complaint of John Hamm against J. E. Congdon, Jr. R. 48 et seq.
   Print the following paragraphs thereof: 9 and 10.

6. Answer of J. E. Congdon, Jr. to cross-complaint of John Hamm—R. 57 to 61.

Print the following paragraphs thereof: 12 and 13.

7. Amended complaint of George M. Illges—R. 64 to 68.
   Print the following paragraphs thereof: 7, 8, and the wherefore clause.

8. Amended answer of J. E. Congdon, Jr. to amended complaint R. 72 to 92.
   Print the following paragraphs thereof: 6, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 46, 47, 50, 54, and the wherefore clause.

9. Reply to George M. Illges to amended answer and counterclaim of J. E. Congdon, Jr.—R. 97 to 101.
   Print the following paragraphs thereof: 1, 7, 15, 16, 18, 19, 20, and 21.

10. Decision of the trial court after trial of case—R. 103 to 116.
    Print all.

11. Supplemental decision and order denying motion for rehearing—R. 123 to 125.
    Print all.

12. Findings of fact and conclusions of law of trial court—R. 127 to 134.
    Print all.

13. Original judgment of trial court—R. 136 to 138.
    Print the following paragraphs thereof: 4 and 5.

14. Notice of appeal of J. E. Congdon, Jr. to the Supreme Court of the State of Wisconsin—R. 145.
    Print all.

15. Decision of the Supreme Court of State of Wisconsin.—R. ....., 248 Wis. 85.
    Print all.

16. Supplemental decision on motion for rehearing of Supreme Court—R. ....., 248 Wis. 85.
    Print all.

17. Decision of trial court after remand of record—R. 955 to 963.
    Print all.

18. Supplemental findings of fact and conclusions of law after remand of the record—R. 965 to 974.
    Print all.

19. Judgment—R. 999 to 1009.
    Print the following thereof:
    Record page 999, omitting caption;
    Record page 1000;
    Record page 1001 to first finding of fact following the words: "It is ordered, found, adjudged, and determined as follows:"

    Then print the following paragraphs thereof: 4, 13, 14, 15 and 16.

20. Notice of appeal by J. E. Congdon, Jr. to the Supreme Court (second appeal).—R. 1053.
    Print all.

21. Notice of motion for review by George M. Illges and Louise Hamm, administratrix of the estate of John Hamm, deceased.—R. .....
    Print all.

22. Decision of Supreme Court on second appeal—R. ....., 251 Wis. 50.
    Print all.

23. Order of trial court of November 3, 1947, amending findings and judgment—R. ..... .
Print all.

24. Order of trial court of November 14, 1947, authorizing disbursal and execution.—R. ..... .
Print all.

25. Print the following portions of the bill of exceptions:

Testimony of George M. Illges:

(a) R. page 190, begin 10th line from top of page to R. page 201, 8th line from bottom of page.

(b) R. page 202, begin 10th line from the bottom of the page to R. page 203, 5th line from the bottom of the page.

(c) R. page 216, begin 13th line from the top of the page to R. page 218, 13th line from the bottom of the page.

(d) R. page 240, begin 12th line from the top of the page to R. page 241, 5th line from the top of the page.

(e) R. page 252, begin last line to R. page 253, 16th line from top of the page.

(f) R. page 255, begin 15th line from the bottom of the page to bottom of page R. 255.

(g) R. page 296, begin 11th line from the top of the page to R. page 297 to 16th line at top of the page.

(h) R. page 298, begin 15th line from top of page to 4th line from bottom of page.

(i) R. page 497, begin top of page to R. page 498 to 3rd line from top of page.

(j) R. page 819, begin top of page, to R. page 820 bottom of page.

(k) R. page 823, begin 5th line from bottom of page to R. page 825 bottom of page.

(l) R. page 836, begin 6th line from bottom of the page to R. 837 to 7th line from top of page.

Testimony of John Hamm:

(m) R. page 444, begin 6th line from the bottom of the page to R. page 449, 17th line from the bottom of the page.

(n) R. page 455, begin 5th line from the top of the page to R. page 456, to 10th line from the bottom of the page.

Testimony of J. E. Congdon, Jr.:

(o) R. page 567, begin 3rd line from the top of the page to R. page 571, 4th line from the top of the page.

(p) R. page 571, begin 16th line from the bottom of the page to R. page 572, 14th line from the bottom of the page.

(q) R. page 578, begin 15th line from the top of page to R. page 581 to 7th line from the top of the page.

(r) R. page 609, begin 9th line from top of the page to R. page 614 to 8th line from the bottom of the page.

(s) R. page 615, begin 2nd line to R. page 615, 4th line from the bottom of the page.

(t) R. page 616, begin 7th line from top of the page to 617 to 6th line from top of the page.

(u) R. page 624, begin 2nd line from bottom of page to R. page 626 to 6th line from the top of the page.

(v) R. page 631, begin 15th line from bottom of page to R. page 636, 6th line from the bottom of the page.

(w) R. page 638, begin 10th line from top of page to R. page 638, 7th line from the bottom of the page.

(x) R. page 642, begin 3rd line from top of the page to R. page 643 to 10th line from top of the page.

(y) R. page 645, begin 12th line from bottom of the page to R. page 646 to end of page.

26. Exhibit 47, R. page ..... .
Print all.

Service admitted this 21st day of January, 1948.

Godfrey, Pfeil & Godfrey,

Attorneys for J. E. Congdon, Jr.,

J. ARTHUR MORAN,
Attorney for Petitioners,
Delavan, Wisconsin.

CAVANAGH, STEPHENSON,
MITTELSTAED & SHELDON,
Of Counsel,
606 56th Street, Kenosha, Wisconsin.

ARGUMENT ON MOTION.

The issues raised upon this petition for certiorari do not require the examination or consideration of the entire record. The greater number of pages of the record and exhibits received and considered by the court relate to the accounting, the history of the creation of the contract and are in no way germane to any issue before the court for consideration on this petition. To require printing of the entire record would impose an unnecessary burden upon the court to examine hundreds of pages of immaterial and unnecessary matter. It would likewise impose excessive and burdensome expense upon petitioners to pay for the printing of a record only a small part of which is necessary to the consideration of the issues here raised. Petitioners have made a sincere effort in accordance with Rule 38 (8) of Rules of the Supreme Court in person and by preparing and offering to stipulate and by designating the portions of the record considered by petitioners necessary to the proper analysis of the issues here presented. Respondent has neither stipulated nor indicated any willingness to stipulate. Neither has he suggested any additional portions of record which he considers material.

We, therefore, respectfully request that the motion be granted either dispensing with the printing of the record as a preliminary step or limiting the record to be printed as designated in Exhibit "B" heretofore appearing.

Respectfully submitted,

J. ARTHUR MORAN,
Attorney for Petitioners,
Delavan, Wisconsin.

CAVANAGH, STEPHENSON,
MITTELSTAED & SHELDON,
Of Counsel,
606 56th Street, Kenosha, Wisconsin.